IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 3821 of 2007(E)

CMP.4495/2005 of J.M.F.C.-I, ALUVA

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PETITIONER:

JOSE MAVELI, S/O. THOMAS,
AGED 55 YEARS, PRESIDENT, JANASEVA SISUBHAVAN,
P.B.NO.107, ALUVA.

BY ADV. SRI.B.S.SWATHY KUMAR
SMT.P.A.ANITHA

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTD BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

ADDL.2. MUTHU, S/O.THANKAYYA,
D.NO.6/363, NARIKURAVAR COLONY,
MANTHITHOPU VILLAGE, KOVILPATTY TALUK,
THOOTHUKKUDY DISTRICT.
(ADDL. SECOND RESPONDENT IS IMPLEADED AS PER ORDER IN I.A.NO.3838 OF 2007 DATED 22/03/2007)

BY GOVERNMENT PLEADER SRI.S.U.NAZER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.3821 OF 2007

PETITIONER'S EXHIBITS:

EXT.P1:-

[TRUE COPY]

PA TO JUDGE

R. BASANT, J.

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W.P.C.No. 3821 of 2007

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Dated this the 12th day of February, 2007

O R D E R

Heard the learned counsel for the petitioner. Issue notice to Muthu, S/o. Thankayya, at whose instance proceedings have been initiated before the C.J.M., Ernakulam. Notice shall also be given by the petitioner to the counsel for the said Muthu, who is appearing before the C.J.M. The said petitioner shall be formally arrayed as a party in this writ petition within 7 days by making necessary application.

2. Call for a report from the learned C.J.M. as to why in the light of the decision in **Parvathy** v. **The Superintendent, Corporation Relief Center** (2002 (1) KLT 523) the First Class Magistrate having territorial jurisdiction is not entitled/disabled from considering a prayer in respect of the child in need of care and protection produced before him. Is any administrative direction issued in this regard. If so, a copy thereof shall be produced along with the report. Such report shall reach this court by 20.2.07. Under what provisions of law is the learned C.J.M. revisiting any order passed earlier by the learned J.F.C.M.

3. All further proceedings before the learned C.J.M. shall stand stayed till that date.

(R. BASANT)
tm Judge

R. BASANT, J.

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W.P.C.No. 3821 of 2007

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Dated this the 2nd day of February, 2007

O R D E R

The petitioner, to whom five children viz. Ezhakki, Sangeetha, Ummachi, Uma and Ayyappan, have been given custody by the J.F.C.M. -I, Alwaye as per order dt. 19.12.2005 in C.M.P.No. 4495 of 2005, has come before this Court on receipt of Ext.P3 notice dt.24.1.2007 from the Principal Magistrate (C.J.M., Ernakulam). The petitioner submits that these five children are not involved in any crime till date and there is no allegation whatsoever against them of having committed any such offences. In these circumstances the petitioner finds no reason for the Principal

Magistrate to direct production of the children. The petitioner is in lawful custody of the children. In these circumstances it is prayed that direction may be issued under Article 227 of the Constitution to the Principal Magistrate not to proceed further with Ext.P3 notice.

2. I am satisfied that a report of the learned C.J.M. must be called for. The learned C.J.M. shall explain why such a direction has

been issued to the petitioner to produce the five children before him. The report of the learned C.J.M. shall reach this court by 7.2.2007. Till then the custody of the children with the petitioner shall not be disturbed. The petitioner shall comply with the direction and produce the children before the learned Chief Judicial Magistrate as and when required.

(R. BASANT)
Judge

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